IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1802 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARBATSINH PRABHATSINH DABHI

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for the Petitioner.

RULE SERVED for Respondent No. 1-2

Ms.Archana Raval, Assistant GOVERNMENT PLEADER, for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/06/2004

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged his detention order dated 17.12.2003, by which he is detained under the provisions of the Gujarat

Prevention of Anti-social Activities Act, 1985 ("PASA", for short) as a 'bootlegger'. Along with the detention order, the petitioner was also served with the grounds of detention. In the aforesaid grounds, there is a reference in connection with one criminal case, which is pending against the petitioner. The aforesaid case is registered against the petitioner under the Bombay Prohibition Act. The detaining authority has also considered statements of some witnesses in connection with unregistered cases and, ultimately, the detention order is passed. The said order is attacked by the petitioner on various grounds.

The learned Advocate for the petitioner submitted that it was not a case in which the petitioner was required to be detained under preventive detention. He also submitted that, at the relevant time, when the detention order was passed, he was in judicial custody and when the petitioner is already in judicial custody, it was not necessary to detain him under preventive detention. He also submitted that, in the instant case, there is no material to show as to on what basis the detaining authority has reached the subjective satisfaction that even though the petitioner is in judicial custody, he may be released on bail and thereafter, he may continue such activities. It is also submitted that even there is no material to show that any bail application was filed by the petitioner-detenu at any point of time. He submitted that no such application is pending.

The learned Advocate for the petitioner has also relied on the decision of the Apex Court in Amritlal & Others v. Union Government and others, AIR 2000 SC 3675. In the said decision, the Apex Court held as under :-

" ... ...

4. In Agustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the

detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

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6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

... ..."

So far as the aforesaid aspect of subjective satisfaction, that though the petitioner is in judicial custody, he may apply for bail and thereafter, after being released on bail, he may continue his activity, is concerned, there is no material to show that the said subjective satisfaction was properly arrived at. The detaining authority was required to, at least, state in the order that in such type of cases, the accused are normally released on bail or some sort of satisfaction should have been recorded for coming to such conclusion. It is pointed out by the learned Advocate for the petitioner that this is a non-bailable offence and, therefore, the presumption on the part of the detaining authority that the petitioner will be released on bail is not proper.

Considering the decision cited above by the petitioner, only on the ground that the detaining authority has not considered as to on what basis the petitioner will be released on bail, the petition is required to be allowed.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

June 22, 2004 (P.B. Majmudar, J.)

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(apj)